

MINUTES

The Town of Manteo Board of Commissioners held their Recessed September 15, 2021 meeting at 5:00 p.m. at Roanoke Island Festival Park, at 1 Festival Park, Manteo, NC.

The following members were present:

- Mayor Bobby Owens
- Mayor Pro-Tem Betty Selby
- Commissioner Richie Burke
- Commissioner Jason Borland
- Commissioner Darrell Collins
- Commissioner Christine Walker

The following members were absent: Commissioner Eddie Mann

Also present at the meeting were:

- Town Manager James Ayers
- Town Attorney Ben Gallop
- Attorney Lauren Womble (Conflict Counsel)
- Information Technology Director Carl Woody
- Town Clerk Jamie Whitley
- Town Planner Melissa Dickerson

Mayor Bobby Owens called the meeting to order at 5:07 p.m. Mr. Ayers conducted a roll call.

SUBJECT: Adoption of Agenda as presented or amended

MOTION: A motion was made by Commissioner Collins and seconded by Mayor Pro-Tem Selby to adopt the agenda and was approved by the following vote: Ayes: Mayor Pro-Tem Selby, Commissioners Burke, Borland, Walker, and Collins. Nays: None. Absent: Commissioner Mann. **Motion carried unanimously.**

PUBLIC COMMENTS

Members of the public are invited to address the Board of Commissioners on any topic. Public Comment is not intended to require the Board to answer any impromptu questions or to take any action on items brought up during the public comment period. Speakers will address all the comments to the Board as a whole and not one individual Commissioner. Discussions between speakers and members of the audience will not be allowed. Time limits are 3 minutes per person or 5 minutes per group. Please identify yourself and your location so that your statements can be recorded.

No one wished to address the Board.

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PRESENTATIONS & REPORTS

SUBJECT: Presentation of Service Awards

Mr. Ayers presented Chris Hurdle with his 10-year employee service award. Chris recently marked his tenth anniversary with the Town of Manteo. Back in 2011, he started with the Public Works Department, and then he moved to the Water and Sewer Department in 2016. Chris holds a Class A Commercial Driver's License. Before his time with the Town, Chris worked in the private sector in key roles including plumbing and electrical work. As a Utility Maintenance Worker, Chris's work is vital to the public infrastructure for the entire Town of Manteo. We offer him our congratulations on a decade of service to the local community.

Mr. Ayers presented Josh O'Brien with his 15-year employee service award. Josh has served the Town of Manteo for fifteen years. Starting as a Utility Maintenance Worker in 2006, Josh was promoted to Plant Operator two years later. For the last five years, he has served as department head for the Water and Sewer Department. Josh has achieved the highest level of certification from the State of North Carolina in all three areas -- water distribution, wastewater collection, and wastewater treatment plant operation. Josh served in the United States Coast Guard as a Public Affairs Specialist followed by work in the private sector as a Director of Sales and Marketing. Josh's leadership of the Water and Sewer Department has been exemplary, and we offer him congratulations for this employee service award.

SUBJECT: Department Head Reports

The Department Head written reports were given to the Board. Due to the Virginia Dare Holiday, we did not have an August workshop meeting, so the July and August Department Head reports are available on our website at manteonc.gov for the general public to review.

SUBJECT: Update on Developer Inquiry

Mr. Ayers stated that at the last meeting, staff was instructed to provide an update on the developer inquiry at this meeting tonight. To provide appropriate background, he stated that we have a few exhibits and information. Since the summer of 2020, there have been numerous meetings, emails, messages, phone calls, and site visits. To keep this short, we will share just a few relevant highlights.

He showed a PowerPoint presentation that showed an area map of the property owned by MKF Realty. He stated that it resembles a rectangle with the long side facing Bowsertown Road and the short side on Exeter Street. Bay Tree and Harbour Towne Apartments are just north of the subject property, and Dare County buildings are located to the east. He showed the survey performed on behalf of the developer before purchasing the property. On the survey, you could see the rectangular shape, and the existing ditches at the Bay Tree side of the property, plus one running north-south, and additional ditching near the NCDOT right-of-way along Bowsertown Road.

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The developer talked to the Town Planner on 06/17/20 about a possible minor subdivision, and a lot line exhibit that was sent to the Town along with a list of questions on 07/23/20. There were several issues raised by the developer, with a follow-up meeting on 08/13/20 and written responses to the list of questions submitted that same day. Following consideration by the developer, conflict counsel became necessary, so the Town had to procure legal services. A written zoning determination was provided to the developer on 09/18/20. A few months later, on 12/07/20, the Town received a sketch showing what appeared to be a major subdivision. Mr. Ayers stated that we had a meeting with the developer and his Engineer, Carlos Gomez of Coastal Engineering, on 12/09/20. Staff provided feedback on the proposed plan and agreed to the ditch relocation that would be designed by the Engineer and shown on the site plan. From December through March, we communicated and/or met with the developer and his Engineer on issues ranging from sewer infrastructure to stormwater.

He stated that on 06/21/21, we received an email indicating the developer wanted to move forward with the planning of the subdivision, and there was a list of questions to be answered, some of which we had addressed previously. Town staff met the next day, 06/22/21, and written responses were sent to the developer on 06/23/21. The ditch issue was noted in the list of questions, and we confirmed again that we would agree to the ditch relocation, and the Engineer should do the design work and show it on the site plan. Things changed on 08/04/21. The developer inquired again about the process for relocating the ditch, and the Town Planner replied that it should be included on the site plan as previously discussed. That response was rejected by the developer as the "wrong answer" even though it was consistent with prior guidance. The developer clarified that now he simply wanted to do a ditch relocation so what permit was required. This was a new and different request, and Town staff agreed to research the issues and get back to the developer.

Mr. Ayers stated that we had never heard of a standalone "ditch relocation permit" so we had to do some research. We had to determine what the applicable permit might or might not be, whether it would fall under the regular development permit process, or whether there were special requirements, like the floodplain development permit noted in Section 26-15 of the Town ordinance but for which there was no form. We also had to figure out who had jurisdiction, what was the process, etc. Mr. Ayers stated that on 08/10/21, the developer requested a meeting with me and the mayor, which was held the same day. It was a lively discussion with many topics. The developer shared information related to an allegedly simplified process, which I promised to follow up on, and we indicated an expected follow-up by the 09/01/21 or 09/15/21 meeting based on that information.

He stated that on 09/01/21, the developer appeared before you, and there were several statements made. At that meeting, it was noted that we would need conflict counsel in this instance.

He introduced Attorney Lauren Womble of The Twiford Law Firm who is providing legal guidance. He stated that Ms. Womble has been admitted to the North Carolina State Bar as well as the U.S. District Court for the Eastern District of North Carolina, and one of her practice areas is local government law. Ms. Womble will present her findings in this matter.

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Attorney Womble came before the Board and stated that she has been involved regarding this project since September of last year. She stated that she is hopeful that we are going to be able to give the Board and the developer a path forward to get this project completed. She gave a summary of what the process is for solely relocating a ditch and the complications of doing that. She is going to send the developer a memo with a summary of everything we are going to talk about tonight so that there is clear documentation about what the process is and what maybe will be possible staff's concerns with either process that is chosen. This way everyone is on the same page.

Attorney Womble reminded the Board that there is a prohibition on filling a ditch which is what is believed to have prompted the developer's question to the town, which is "What do I do?". Mr. Ayers has already covered the history of this development. She stated that she believed that understanding was that the ditch relocation was going to occur through the development process. She stated that in the ordinance there is a substantial amount of stormwater planning, drainage ditches, and stormwater consideration given through the development process in multiple sections which would affect the relocation of a ditch. She stated that generally relocating a ditch happens through the development process so it would happen on a site plan with an entire project in place. She stated that it is not common that a ditch would be relocated on its own. However, she does think that it can occur and listed different ordinances that could apply. She stated that to only relocate the ditch, the developer would need to submit a site plan to the Planning Board for relocation of the ditch alone for review. She believes that is the process within the ordinance. She stated that we get around the prohibition on filling a ditch by addressing the stormwater needs and following the site plan review process by the Planning Board. She stated that the concern would be that following this process, you have to have a stormwater impact statement and a stormwater management plan. She stated at the last meeting the developer was willing to have an engineer prepare the necessary drawings and information and submit that for approval, he just needed to know the process. She stated that there are some concerns regarding this because if the ditch is relocated by a site review of a site plan with a stormwater impact statement and management plan that process is going to have to be considered again at the application of the project. This is at the developer's discretion if he decides to pursue that. She stated that historically with this project, there have been several possibilities that the developer could pursue a variance to achieve his goals but if the ditch is relocated then that removes some of those grounds by which a variance might be applicable. This is at the developer's discretion also. Attorney Womble stated that these are some concerns that need to be noted and brought to the Board and the developer's attention. By going this path, it may be cutting off some options that may be available to pursue the full development plan. She stated that there are other options covered in the ordinance like a phased development so the developer could make phase 1 relocating the ditch and phase 2 could be moving into construction.

Attorney Womble summarized that to relocate the ditch there needs to be a site plan and a stormwater impact statement. She stated the ordinance requires dedication for 10 feet from the center of a drainage ditch on either side to the town. She stated that if we relocate the ditch alone, we don't know how this will impact the development because we are only dealing with the ditch. She stated that moving a ditch alone might be extra hoops to jump through and this may be why you don't see a delineated specific process in the ordinance for only relocating a ditch because that generally occurs through a site plan for full development. She stated that she is going to do a

memo for the developer and provide all that information so that they can review and decide which path they would like to take.

The Board wanted to hear from the developer, Malcolm Fearing.

Mr. Fearing thanked the Board for allowing him to speak. He claimed that he was shocked that this was on the agenda and he wanted to participate in this process but he has heard nothing from Mr. Ayers since the last meeting. He claimed that he has never been told that the ditch could be relocated. He stated that housing is a critical issue in our county. He stated that lawyers are involved and he doesn't understand the difficulty in this process. He stated that there is stormwater on a state permit if you disturb an acre of land. He stated that the project has changed but that is the process of talking to the planning department and staff to make a doable plan. He stated that the key element is a ditch and that he met with NCDOT (North Carolina Department of Transportation) today, to who the water transfers. He stated that he hired an engineer John DeLucia, who is familiar with working with NCDOT on issues such as this. He stated that he has a letter from the Town Planner with a list of concerns but the dedication of 10 feet was not in that letter. He stated that he has not had a conversation about the dedication of land and that could be an oversight. He stated that this is becoming a difficult circumstance when it should be simple. He stated that this is an agenda item but no one on staff called him to tell him that this was going to be on the agenda.

Attorney Womble clarified that at the last meeting it was announced in open session with everybody there that this was going to be on as an update. She also stated that she is here not to turn this into an adversarial process but she is here in place of Town Attorney Ben Gallop because he has a conflict. She stated again that she is going to put all of this information in a memo.

Mayor Pro-Tem Selby asked for clarification that the developer did not know the results of the findings until tonight.

Mr. Ayers stated that we are just hearing the findings. He stated that our conflict council has indicated that she was formulating her response since we contacted her after that last meeting. The direction from the Board was to bring it back tonight. Attorney Womble promised to put this information in a memo to be delivered to the developer.

Mayor Owens wanted to know why a developer can't build because of a ditch.

Attorney Womble explained to the Mayor that there has not been an application. She stated the most practical way to expedite that project would be for the developer to apply for the project in its entirety. She stated that the developer does not have to do that but if he does it in one application then staff can find more ways to help the developer with the whole project.

Mayor Owens stated that he has been out and looked at the ditch and that there are some drainage problems there from the water that comes from the Bay Tree Apartments. He wanted to know what the problem is other than stormwater runoff.

Attorney Womble stated that the town is hamstrung until there is an application to move through the process. She explained that the ditch was on the property when Mr. Fearing purchased the property and under North Carolina law, when you purchase a property, you assume the hydrology of that parcel. She stated that if he is going to change the ditches then he is going to have to address how the water flows and exits his property. She stated that the ordinance is clear and that the North Carolina General Statutes prohibits filling ditches. She stated that we are hamstrung on two levels but there is a path out. She stated that the path out is doing a site plan and relocating the ditch. The developer will have to go before the Planning Board.

Mr. Fearing stated that architects, engineers and surveyors are expensive but necessary for development. He stated that this is the first time he has heard that the town is willing to relocate the ditch. He stated that before he can develop a plan, he has to deal with the ditch until he deals with the two ditches, he is stopped. He stated that he is simply trying to get an answer.

Attorney Womble explained to Mr. Fearing that if he applies just to move the ditch and that gets approved and then he comes back to the town with a second application for the development then the town has to re-evaluate how your development impacts the new location of this drain or piping that you put in place. She stated that approval of relocating the ditch will not bind the town to agree that that is the appropriate drainage or stormwater plan for the next development.

Commissioner Borland summarized that having to do two application is not the most efficient way but that is why there are permit fees because of the review process. He stated that application one to move the ditch so that Mr. Fearing doesn't have to pay engineering fees but that could possibly affect what is developed later. He stated that there are two options. He stated that Mr. Ayers left the last meeting with an action item to come back to this meeting with the process. Attorney Womble has clarified what the process is.

Attorney Womble stated that she is available to help moving forward if Mr. Fearing or his engineer would like to contact her. The application for a ditch relocation only will have to go to the planning board but a major subdivision will come to the Board of Commissioners. She will be sending a memo to the Board and the developer on everything that was discussed tonight.

PLANNING AND ZONING BOARD CALL TO ORDER

Planning and Zoning Board Chair Sherry Wickstrom called the Planning and Zoning Board Meeting to order at 5:49 p.m.

COMPREHENSIVE PLAN KICK-OFF SESSION

PRESENTATION

Jay McLeod from Stewart Inc. presented a PowerPoint Presentation on Stewart Inc. and the process for the upcoming comprehensive plan for the Town of Manteo.

Mr. McLeod introduced himself and his team of professionals that will be helping with the comprehensive plan.

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He explained the Leadership Committee Roles:

- Meet regularly during the project
- Review plan documents and provide comments/revisions
- Listen and contribute perspective, ideas, and opinions
- Get others involved and be an ambassador for the Plan

He presented the project schedule and the timeframe for completion of the comprehensive plan.
He explained what a comprehensive plan is:

- A way to collect and agree on a shared community vision
- Helps leadership prioritize community goals
- Guide rezonings and land development decisions
- Mandated by the state (condition of adopting and applying zoning regulations)
- A community conversation about shared goals and values

The comprehensive plan will be comprised of:

- CAMA (Coastal Area Management Act)
- Environment
- Community Vision & Goals
- Transportation
- Infrastructure & Utilities
- Economy
- Parks and Open Space
- Land Use
- Other

They will use information gathered from public engagement, a vision and values survey, public meetings, and tonight's open house. There will be a public meeting on October 27th tentatively to get community feedback.

COMPREHENSIVE PLAN Q&A

Dave Stempel, 815 Lindsey Lane, asked if Mr. McLeod has the information from the 20-year working group.

Mr. McLeod responded that the town has already transferred all of that information to them and they have been reviewing it. He stated that it was great to see all the work that has been done previously.

PLANNING AND ZONING BOARD ADJOURNMENT

There being no further business to come before the Planning and Zoning Board a motion was made by Member Goodman and seconded by Member Scarborough and the Planning and Zoning meeting was adjourned at 6:15 p.m. The motion was approved by the following vote: Ayes:

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Chair Wickstrom, Members Northrup, Scarborough, Goodman, and Daniels. Nays: None. Absent: None. **Motion carried unanimously.**

MAYOR'S/COMMISSIONERS COMMENTS

Mayor Owens: He thanked everyone that helped put this meeting on tonight and thanked Roanoke Island Festival Park.

Commissioner Borland: He stated that this comprehensive plan is going to help drive a lot of things in town. We need to get more people looking at the October 27th meeting.

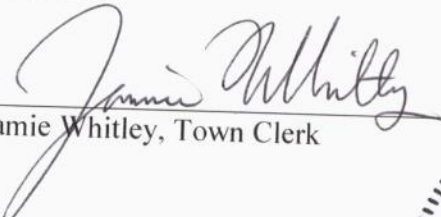
Commissioner Collins: He stated that he hopes that the comprehensive plan has a focus on stormwater runoff and that tonight is a good start.

ADJOURNMENT

There being no further business to come before the Board or other persons to be heard a motion was made by Mayor Pro-Tem Betty Selby and seconded by Commissioner Borland the meeting was adjourned at 6:18 p.m. The motion was approved by the following vote: Ayes: Mayor Pro-Tem Selby, Commissioners Burke, Borland, Walker, and Collins. Nays: None. Absent: Commissioner Mann. **Motion carried unanimously.**

This the 15th day of September 2021.

ATTEST:


Jamie Whitley, Town Clerk


Bobby Owens, Mayor

